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JUDICIAL ETHICS OPINION JE-105

April 30, 2004

Question: May a sitting judge or a judicial candidate identify himself/herself as a member of a specific political party and further comment on the probable effect of such political party membership on an impending governor's appointment to a judicial vacancy in response to a direct question when:

- (1) Such questions are asked during a television interview by a member of the local press; and
- (2) The known audience includes, but is not limited to the entire geographic area/county wherein the sitting judge or judicial candidate is seeking election; and
- (3) The sitting judge or judicial candidate is voluntarily participating in the interview for the specific purpose of promoting his/her candidacy and convincing the voting public to elect said sitting judge or judicial candidate to a judicial office?

Answer: No. In accordance with the Constitution, Kentucky's judicial elections are nonpartisan and permitting such a dialogue within public gatherings or organized groups would effectively destroy the nonpartisan character of judicial elections. Canon 5(A)(2) cannot be construed to accomplish such an absurd result.

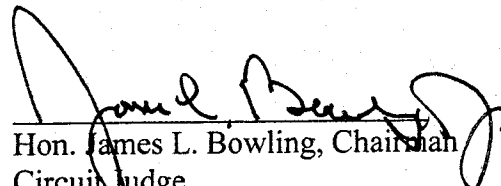
In accordance with Ky. Const. § 117, judicial elections in Kentucky are nonpartisan. Throughout Canon 5, judges are constrained in their political conduct in an attempt to maintain the nonpartisan character of judicial elections. Judges cannot contribute to political candidates or to a political party and they cannot publicly endorse other candidates for office. While they are permitted to attend political gatherings to campaign on their own behalf, efforts must be made to separate themselves from their surroundings so that an impression is not created that the candidate is there to benefit someone other than himself.

For these reasons, the language of Canon 5(A)(2) is problematic. Canon 5(A)(2) states:

A judge or candidate shall not identify himself or herself as a member of a political party in any form of advertising, or when speaking to a gathering. If not initiated by the judge or candidate for such office, and only in answer to a direct question, the judge or candidate may identify himself or herself as a member of a particular political party.

At first blush, the statute appears to carve an exception to the general rule that a candidate cannot identify himself as a member of a particular party when speaking to a gathering. (The Committee construes an appearance on television or radio to be an appearance at a gathering). But, it is also possible to read the statute as setting forth two separate rules--one rule applicable to gatherings and the other rule applicable to other types of situations. In other words, at the very least, the statute contains an ambiguity. At most, the two provisions contradict each other.

When presented with such a situation, courts are authorized to look to the intent of the legislature and the purpose of the statute. 73 Am.Jur.2d § 169 (2001). The Committee believes that it is appropriate to do likewise in construing this canon. As we have already stated, the purpose of Canon 5 and the Code of Judicial Conduct as a whole is to preserve nonpartisan elections and the independence of the judiciary. Therefore, the only possible interpretation of Canon 5(A)(2) which satisfies these goals is to construe the last sentence of the paragraph to apply only to one-on-one situations or very small private informal groups. Any other construction would permit partisanship into Kentucky's judicial elections and thereby possibly render this section of the Code unconstitutional by bringing it into violation of Ky. Const. § 117.



Hon. James L. Bowling, Chairman
Circuit Judge
The Ethics Committee of the
Kentucky Judiciary